dangerous." [10] In either of these exceptions it is hard to find any duty to the injured sub-vendee if it does not exist in the ordinary case. The latter exception is very elastic. Its development has been especially interesting in New York. The first case recognizing the exception [11] applied it to a poisonous drug improperly labeled. But a little later the principle was held not to apply to a flywheel [12] nor to a boiler.[13] In later years, however, the New York courts have carried this exception to its extreme and the following articles have been held intrinsically dangerous: a scaffold,[14] a derrick rope,[15] an elevator,[16] a siphon bottle,[17] and a steam coffee urn.[18] Indeed, two other courts have informed us that a cake of soap is such an intrinsically dangerous article.[19] When we see a so-called exception carried to such extremes, it clearly shows that the rule itself is recognized as wrong and is as good as abrogated.[20]

Fortunately, however, the court in the principal case does not attempt to justify its result (as indeed it might without serious inconsistency have done) on a further application of the exception of intrinsically dangerous articles. The decision is avowedly based on ordinary principles of tort liability.[21] The result reached must be deemed alike sound in principle and desirable in policy.

RELIEF FOR WRONGFUL EXPULSION FROM ENGLISH TRADE UNIONS. — The rights of members of a trade union *inter se* have been rather unsettled in England since the trade union acts of 1871.[1] That act legalized such associations, but provided that it should not enable any legal proceedings to be maintained for "directly enforcing or recovering damages for the

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[10] George *v.* Skivington, L. R. 5 Exch. 1; Thomas *v.* Winchester, 6 N. Y. 397; Blood Balm Co. *v.* Cooper, 83 Ga. 457, 10 S. E. 118; Roberts *v.* Anheuser-Busch Brewing Co., 211 Mass. 449, 98 N. E. 95. The rule, as might be expected, is applied frequently in cases relating to defective food. Tomlinson *v.* Armour & Co., 75 N. J. L. 748, 70 Atl. 314; Ketterer *v.* Armour & Co., 200 Fed. 322; Mazzetti *v.* Armour & Co., 75 Wash. 622, 135 Pac. 633; Catani *v.* Swift & Co., 95 Atl. 931 (Pa.).

[11] Thomas *v.* Winchester, 6 N. Y. 397.

[12] Loop *v.* Litchfield, 42 N. Y. 351.

[13] Losee *v.* Clute, 51 N. Y. 494.

[14] Delvin *v.* Smith, 89 N. Y. 470. *Cf.* Coughtry *v.* Globe Manufacturing Co., 56 N. Y. 124.

[15] See Davies *v.* Pelham Hod Elevator Co., 65 Hun 573, 20 N. Y. Supp. 523.

[16] Kahner *v.* Otis Elevator Co., 96 N. Y. App. Div. 169, 89 N. Y. Supp. 185.

[17] Torgeson *v.* Schultz, 192 N. Y. 156, 84 N. E. 956.

[18] See Statler *v.* Ray Mfg. Co., 195 N. Y. 478, 481, 88 N. E. 1063, 1064.

[19] Hasbrouck *v.* Armour & Co., 139 Wis. 357, 121 N. W. 157; Armstrong Packing Co. *v.* Clem, 151 S. W. 576 (Texas).

[20] See 17 HARV. L. REV. 274. Cases that show this even more clearly than those cited are Mazzetti *v.* Armour & Co., 75 Wash. 622, 135 Pac. 633, and Quackenbush *v.* Ford Motor Co., 167 N. Y. App. Div. 433, 153 N. Y. Supp. 131, in both of which recovery was granted for an injury other than a hurt to the plaintiff's body. Such cases cannot by any stretch be brought within the reasons given for the "intrinsically dangerous" exception.

[21] "We have put aside the notion that the duty to safeguard life and limb, when the consequences of negligence may be foreseen, grows out of contract and nothing else. We have put the source of the obligation where it ought to be. We have put its source in the law."

[1] 34 & 35 VICT. c. 31.

breach of" certain specified agreements.[2] It was naturally a matter of some uncertainty just what fell within the term "directly enforcing." The House of Lords authoritatively settled in 1905 that a payment of benefit funds to persons not entitled could be enjoined [3] although agreements regarding such funds were not directly enforceable under the act,[4] and Lord Davey in his dissent pointed out that under the principle of *Lumley* v. *Wagner*[5] this is enforcing the agreement through its implied negative.[6] From this a decision readily followed that the wrongful expulsion of a member could be declared void and an injunction issued against enforcing it,[7] although the plaintiff would thereby be put in a position where he might receive benefits. The Court of Appeal, following that decision, have now sustained an injunction against a union restraining it from enforcing the expulsion of a member, but have at the same time refused to award the member damages suffered on account of his *de facto* expulsion. *Kelly* v. *Nat. Soc. of Operative Printers*, 113 L. T. R. (N. S.) 1055.

The whole bill might perhaps have been dismissed on the ground that it lay in tort and thus ran afoul of the Trade Disputes Act of 1906.[8] The result of the court might possibly have been reached by introducing another subtlety into the construction of the Act of 1871, to wit: that since the plaintiff is asking damages on account of his loss of employment inevitably caused by his expulsion, such damages, if recovered, would be for the breach of an agreement concerning the conditions on which any member should be employed, which is not actionable under the act,[9] notwithstanding the fact that his reinstatement is held not to "directly enforce" such an agreement. Although this suggestion is probably untenable, the grounds advanced by the court seem rather less plausible. The union is treated as an association of individuals and not as an entity, contrary to apparently the great weight of judicial opinion in England;[10]

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[2] 34 & 35 VICT. c. 31, § 4.

[3] Yorkshire Miners' Ass'n *v.* Howden, [1905] A. C. 256. *Accord*, Wolfe *v.* Mathews, 21 Ch. D. 194; McLaren *v.* Miller, 7 Sess. Cas. (4th Ser.) 867; *cf.* Cope *v.* Crossingham, 52 SOL. J. 683. See 52 SOL. J. 697. *Contra*, Rigby *v.* Connol, 14 Ch. D. 482; Chamberlains Wharf Ltd. *v.* Smith, [1900] 2 Ch. 605; Duke *v.* Tittleboy, 49 L. J. Ch. 802. This presupposes the decision that a labor union can be sued. Taff Vale Ry. Co. *v.* Amlg. Soc. of Ry. Servants, [1901] A. C. 426; Trollope & Sons *v.* London Bldg. Tr. Fed., 72 L. T. R. (N. S.) 342; *cf.* Ruck *v.* Williams, 3 H. & N. 308. *Contra*, Lyons & Sons *v.* Wilkins, [1899] 1 Ch. 255, 259.

[4] 34 & 35 VICT. c. 31, § 4 (3) *a*.

[5] 1 De G. M. & G. 604.

[6] See Yorkshire Miners' Ass'n *v.* Howden, [1905] A. C. 256, 269. There is also force in the suggestion of MacNaughten, L. J., that the word "directly" in the statute seems to be used only to mark a contrast with the words "recovering damages," which follow. See *id.*, p. 264.

[7] Osborne *v.* Amlg. Soc. of Ry. Servants, [1911] 1 Ch. 540.

[8] 6 EDW. VII, c. 47, § 4.

[9] 34 & 35 VICT. c. 31, § 4 (1).

[10] The opinion of Farwell, J., in the Taff Vale case clearly holds it an entity. See [1901] A. C. 426, 429. Each of the five opinions in the House of Lords, except that of Lindley, L. J., expressly approves the opinion of Farwell, J. See *id.*, pp. 436, 440, 441. Furthermore, Halsbury, L. C., speaks of the "thing" created by the Legislature. See p. 436. And Brompton, L. J., expressly says the union is an entity. See p. 442. See also Yorkshire Miners' Ass'n *v.* Howden, [1905] A. C. 256, 275, *per* James, L. J.; Osborne *v.* Amlg. Soc. of Ry. Servants, [1909] 1 Ch. 163, 191, *per* Farwell, J.; *id.*, [1910] A. C. 87, 102, *per* Atkinson, L. J.; *cf. id.*, [1910] A. C. 87, 93, 107, *per* Halsbury, L. C.,

but even assuming that point in favor of the court, the difficulties are not removed. Bankes, L. J., says that the plaintiff, in proving that the expulsion was unauthorized by the rules, necessarily shows that the officers were not the authorized agents of the members to do the acts complained of, and hence that the members could not be held for the damage thereby caused. The doctrine of scope of the employment in agency is too elementary to require more than mention, but it seems to have been ignored. The same line of reasoning would lead to the ingenuous suggestion that no recovery could be had on an *intra vires* contract of a corporation, for its breach would be beyond the capacity of the corporation.[11] Bankes and Phillimore, L. JJ., also make the point that the officers of the association were as much agents of the plaintiff as of the other members and that he would be suing himself if he sued the principals. A court with equitable powers, however, is scarcely worried by an objection of such prenebular tenuosity. A partner can bring a bill for relief against his co-partners [12] and if, as is perhaps seldom the case, no accounting is necessary, he has been allowed to maintain a bill on a single claim.[13] Cases may be put such as that of a grocer's boy negligently running over one of his masters, and it seems clear that the injured party should have damages, diminished in proportion to his interest in the business.[14] The justice of the situation is not changed whether the right be regarded as against all the principals with a right on their part to contribution from him, or simply as a right on his part to get them to contribute to the loss suffered by him on account of the common agency. If there is a partnership, the plaintiff was not acting in the capacity of a partner in being injured, but as an outsider, and the fact that he is also one of the persons responsible for the act of the agent should prevent him from recovering some but not all of the damages suffered. This reasoning applies *a fortiori* to the principal case where there is no partnership, where there is no difficulty as to an accounting and where the interest of the plaintiff as a principal is insignificant. If, however, the association is treated as an

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and Shaw, L. J.; *id.*, [1909] 1 Ch. 163, 174, *per* Cozens-Hardy, M. R.; Taff Vale Ry. Co. *v.* Amlg. Soc. of Ry. Servants, [1901] 1 K. B. 170, 175, *per* Cozens-Hardy, M. R., quoting Farwell, J. The judges in the principal case have seized upon two *dicta* by MacNaughten, L. J., which point the other way. See Russell *v.* Amlg. Soc. of Carpenters, etc., [1912] A. C. 421, 429; Taff Vale Ry. Co. *v.* Amlg. Soc. of Ry. Servants, [1901] A. C. 426, 439. A couple of observations by Lindley, L. J., seem the only other authority for the non-entity view. See Yorkshire Miners' Ass'n *v.* Howden, [1905] A. C. 256, 280; Taff Vale Ry. Co. *v.* Amlg. Soc. of Ry. Servants, [1901] A. C. 426, 443.

[11] This is not much more extravagant than the notion once held that a corporation could not commit a tort. See Edward H. Warren, "Executed *Ultra Vires* Transactions," 23 HARV. L. REV. 495, 498.

[12] Cole *v.* Reynolds, 18 N. Y. 74; Crosby *v.* Timolat, 50 Minn. 171, 52 N. W. 526. See LINDLEY, PARTNERSHIP, 6 ed., 276; PARSONS, PARTNERSHIP, 4 ed., 269, 276, 281.

[13] Stettheimer *v.* Stettheimer, 114 N. Y. 501, 505, 21 N. E. 1018, 1019. The old rule at law was of course otherwise. Bosanquet *v.* Wray, 6 Taunt. 597. See PARSONS, PARTNERSHIP, 4 ed., 246–47.

[14] Where a statute makes partnership debts joint and several, a partner has been allowed to recover a part of a debt from the firm on this principle at law. Willis *v.* Banon, 143 Mo. 450, 45 S. W. 289. Damages might be severed where one partner fraudulently conveys firm property. See PARSONS, PARTNERSHIP, 4 ed., 275. Contribution between those vicariously liable for a tort should not be denied where both are innocent of any personal wrongdoing. See POLLOCK, TORTS, 195; SALMOND, TORTS, 2 ed., § 25.

entity, which seems more in accord with both reason and authority, no deduction should be made in the amount recovered, for the plaintiff is not then a defendant. An additional difficulty in the decision rendered lies in the fact that if the union has done nothing, and if there is no legal right against it, an injunction such as appears to have issued is not easily supported.

RECENT CASES

ADMIRALTY — JURISDICTION — VESSEL REQUISITIONED BY FOREIGN GOVERNMENT RELEASED ON OWNER'S BOND. — A vessel was libeled, and released on the owner's bond. Thereafter the United States Attorney suggested to the court that the ship had previously been requisitioned by the Italian government, and was engaged in government business. *Held*, that the attachment would not be quashed nor the bond canceled. *Barnes-Ames Co.* v. *S. S. Luigi*, 73 Leg. Int. 141 (U. S. Dist. Ct.)

It is well established that the vessels of a foreign government devoted to a public use are not liable to arrest. *The Parlement Belge*, 5 P. D. 197. See 17 HARV. L. REV. 270. Here the Italian government by the requisition seems to have acquired a prior lien on the vessel. Accordingly the court should have refused the order for attachment if it had known the facts, not because of any defense of the owner, but out of respect to the interests of the government, an objection to the proceeding which from the owner's standpoint was purely accidental. But by the release of a ship on bond, the latter is substituted for the former, and the authority of the court over the vessel entirely ceases. *The Old Concord*, 18 Fed. Cas., No. 10,482. See *The Frank Vanderkerchen*, 87 Fed. 763, 765. See BENEDICT, ADMIRALTY, 4 ed., § 421. Thus after the release, the interests of the government in the ship are no longer under the authority of the court, but only the owner's bond, in which the government has no interest. Therefore no objection remains to letting the action proceed, since the court will not be exercising jurisdiction over any property of the government. In a similar case, where the bond was given by the agent of the owning government, the action was dismissed. *The Jassy*, [1906] P. 270. But there the government was interested in the bond as well as in the ship, and would have been impleaded had the action proceeded. And it is a settled principle of international law that no sovereign can be impleaded in any court. See *The Parlement Belge*, *supra*, 219.

BANKRUPTCY — JURISDICTION — IS A DEPOSIT IN A LOCAL BANK PROPERTY WITHIN THE JURISDICTION? — Section 2 (1) of the Bankruptcy Act provides that the federal courts shall have jurisdiction to adjudge persons bankrupt who have property within the jurisdiction. The defendant committed an act of bankruptcy in England, where he was resident. He had money deposited in a bank in New York, but no other property there. A petition is brought in New York within four months. *Held*, that the New York court has jurisdiction to adjudicate him a bankrupt. *In re Berthoud*, 54 N. Y. L. J. 2321 (U. S. Dist. Ct., S. Dist. N. Y.).

A bank deposit of a bankrupt is clearly property within the act in the sense that it passes to his trustee. *Cf. New York County Nat. Bank* v. *Massey*, 192 U. S. 138. It is evident, therefore, that it is sufficient to support bankruptcy proceedings if its *situs* is in the jurisdiction. Since an intangible *chose* can of course have no location in fact, its *situs* must be that place having such power to control it as the relief sought demands. See *Matter of Houdayer*,